

PRIVILEGED AND CONFIDENTIAL
ATTORNEYS' WORK PRODUCT

Draft--June 16, 1987

DELIVERED BY HAND

Judith P. Wilkenfeld, Esquire
Program Adviser
Cigarette Advertising and Testing
Federal Trade Commission
Room 4007
601 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Commission Monitoring of TITL
Testing Program

Dear Ms. Wilkenfeld:

There is enclosed a copy of guidelines that have been developed by the major United States cigarette manufacturers for the future operation of the Tobacco Institute Testing Laboratory ("TITL"). The guidelines are designed to resolve a number of uncertainties raised by the Federal Trade Commission's decision to close its in-house testing laboratory.

We understand that the Commission intends, despite the closing of its in-house laboratory, to continue to include "tar" and nicotine data in the annual reports that the Commission submits to Congress on cigarette advertising. We understand further that the Commission staff would like in that connection to develop procedures that would permit the Commission to monitor the TITL testing program.

As we have indicated on previous occasions, the major United States cigarette manufacturers do not believe that the Commission can require cigarette advertising to include data on "tar" and nicotine. They also do not believe that the Commission could insist that it be permitted to monitor the TITL testing program or, indeed, that Commission oversight is needed to ensure the continued accuracy and reliability of TITL testing. Nevertheless, as an accommodation and in the spirit of cooperation, the manufacturers are prepared to permit Commission employees to monitor the TITL

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testing program in the manner you suggested during our recent meeting.

Specifically, we have asked Dr. William Steele, TITL Director, to notify Mr. Harold Pillsbury of your staff at least ten (10) days before the commencement of any cigarette pickup, which is the first step in any testing cycle. Mr. Pillsbury will be permitted at that time to review the procedures to be used in the pickup. He also will be permitted to review any documents that discuss the pickup procedures, including any contracts that the TITL has entered into with the firm that has been selected to perform the pickup.

Once cigarettes have begun to arrive at the TITL following a pickup, Mr. Pillsbury will be permitted to visit the TITL -- on any schedule he deems appropriate and without prior notice to Dr. Steele or other TITL employees -- to monitor the handling and testing of the cigarettes. In addition, Mr. Pillsbury will be given access to any TITL computer sheets and other test documents that are generated in the course of any testing cycle. Any copies of documents that Mr. Pillsbury may request, not involving trade secrets or other confidential information, will be provided at TITL's cost and will be billed directly to the Commission.

Please let me know promptly if the foregoing procedures are satisfactory to the Commission staff.

Sincerely,

John P. Rupp

Enclosure
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